

1 MR. COLE: The pleading are in the record.

2 JUDGE CHACHKIN: All right, Mr. Cole.

3 MR. COLE: The staff did not act -- and, I should  
4 also point out and, I believe, this is correct, but again,  
5 the record will speak for itself. That Rainbow repeatedly  
6 advised the Commission in 1991, that it would have the  
7 station on the air by the end of December 1992.  
8 Unequivocally, represented in its applications that that was  
9 its intention.

10 Without saying that they needed to have the 316,  
11 that is, the assignment application from Rainbow  
12 Broadcasting Company to Rainbow Broadcasting Limited  
13 granted. In March of 1993, the staff wrote to Rainbow, and  
14 asked them what the status of construction was. And only at  
15 that point, for the first time, did Rainbow Company advise  
16 the staff that, in fact, they weren't in a position to  
17 build, unless the assignment from Company to Limited was  
18 granted.

19 MS. POLIVY: Your Honor, I object. And I ask that  
20 that be stricken --

21 JUDGE CHACHKIN: How is that erroneous?

22 MS. POLIVY: Because that was not what the letter  
23 said. And, I think, if Mr. Cole wants to rely upon  
24 statements that were made to the Commission, they ought to  
25 be presented to us. And for me to sit here -- I won't

1 characterize them either.

2 But the fact of the matter is, that Rainbow  
3 Broadcasting Company was ready, willing and able to  
4 construct the station as Company. They told the Commission  
5 that they would prefer to use the equity financing of  
6 Limited, as any other applicant would prefer to do, if the  
7 opportunity presented itself. But that does not mean that  
8 Rainbow Broadcasting Company's financial qualifications was  
9 dependent on Rainbow Broadcasting Limited.

10 And the effort to extend this examination into  
11 Rainbow Broadcasting Limited does nothing. If Rainbow  
12 Broadcasting Company came in here and said, we were relying  
13 on Rainbow Broadcasting Limited, that would be one thing.  
14 Then they would have to show how that was possible. But if  
15 Rainbow Broadcasting Company says, we have our source of  
16 funding and this is what we are relying on. If that does  
17 not include Rainbow Broadcasting Limited, then, obviously,  
18 the financing of Rainbow Broadcasting Limited is of no  
19 concern to the issues that have been designated.

20 But I do think that if this is going to become a  
21 question that is pivotal here, then it ought to be presented  
22 in writing, and we ought to have an opportunity to respond  
23 to it. And you ought to have the opportunity to have the  
24 actual pleadings before you.

25 JUDGE CHACKIN: All we are talking about now is

1 production of documents.

2 MS. POLIVY: That is right, Your Honor.

3 JUDGE CHACHKIN: We are not talking about  
4 admissibility of evidence at this time.

5 MS. POLIVY: No, I am not talking about  
6 admissibility of evidence. I am talking about an ongoing  
7 effort by press to involve itself in the internal workings  
8 of Rainbow Broadcasting Limited, which is a competitor.  
9 Now, unless there is some evidence that this is relevant to  
10 the issues that the Commission has designated, then I think  
11 that, clearly, it does not meet the Commission's standard  
12 for discovery.

13 JUDGE CHACHKIN: Well, --

14 MS. POLIVY: And I would also note, Your Honor,  
15 that there is no motion before you regarding Rainbow  
16 Broadcasting Limited.

17 JUDGE CHACHKIN: All I have requested is, number  
18 five, is copy of tax returns, filed with the IRS for years  
19 1991, 1992, and 1993 --

20 MS. POLIVY: And that is Rainbow Broadcasting  
21 Company?

22 JUDGE CHACHKIN: That is Rainbow Broadcasting  
23 Company. And I am going to grant that request. As far as  
24 number six --

25 MR. EISEN: Your Honor --

1 JUDGE CHACHKIN: I am going to grant number six.  
2 Number seven I am also going to grant. Eight, there is no  
3 objection to. Nine, I am going to grant number nine.

4 MR. EISEN: Your Honor, are we going back and  
5 amending what I thought was the agreement that was reached  
6 at the first pre-hearing conference with regard to the  
7 scope, time and the financial misrepresentation issue?

8 JUDGE CHACHKIN: How am I amending it?

9 MR. EISEN: Well, this number nine contemplates a  
10 date in June of 1994. And my understanding is --

11 JUDGE CHACHKIN: No, no, it relates to 1990  
12 through June 3, 1994. All these document requests are for  
13 the period November 2, 1990 through June 3, 1994.

14 MR. BLOCK: Your Honor, Mr. Eisen's concerned  
15 maybe about the --

16 JUDGE CHACHKIN: That is all we are talking about  
17 here.

18 MR. BLOCK: -- question is to the first three  
19 months of operation. The document request asks for the  
20 source of the funds, not when they were expended, but the  
21 source of the funds for that --

22 JUDGE CHACHKIN: I understand that.

23 MR. BLOCK: -- so that could very well be a pre-  
24 operation document.

25 MR. EISEN: Well, all I am saying is --

1 JUDGE CHACHKIN: Well, the construction didn't  
2 take place until when?

3 MR. EISEN: 1994, June.

4 JUDGE CHACHKIN: All right.

5 MR. EISEN: That is when the station began  
6 operating.

7 JUDGE CHACHKIN: Well, what is being asked for is  
8 the documents relating to the source of funds expended by  
9 Rainbow in constructing the station.

10 MR. EISEN: But the key word you use is Rainbow  
11 because Rainbow Broadcasting Company did not construct the  
12 station with any funds. It was Rainbow Broadcasting  
13 Limited.

14 MS. POLIVY: And that is not an issue. Your  
15 Honor, this is what I was trying to point out. The issue  
16 relates to Rainbow Broadcasting Company. There is no  
17 question as to how Rainbow Broadcasting Limited constructed  
18 the station.

19 JUDGE CHACHKIN: Mr. Block, do you believe this is  
20 an issue? Rainbow Broadcasting Limited?

21 MR. BLOCK: I believe that the --

22 JUDGE CHACHKIN: Are you saying that the same  
23 source of funds which Rainbow Broadcasting Limited utilized  
24 was the source of funds which was represented -- is the  
25 purpose of this to determine whether the source of funds

1 expended by Limited matches the source of funds which were  
2 previously represented by the Company?

3 MS. POLIVY: Your Honor, we did not use Rainbow  
4 Broadcasting Company's source -- Mr. Conant's loan to  
5 Rainbow Broadcasting Company. And that wasn't -- they are  
6 totally separate

7 JUDGE CHACHKIN: If they are totally separate,  
8 then how is this relevant? I mean, is anybody urging that  
9 Rainbow Broadcasting Limited was financial unqualified? Is  
10 financial unqualified -- did not have a source of funds?

11 MS. POLIVY: Well, it built the station.

12 JUDGE CHACHKIN: I know that, that is what --

13 MR. COLE: That is what is important, Your Honor,  
14 and again, it may be useful to take a break and get a copy  
15 of Rainbow Company's April 1993 submission to the  
16 Commission. And I understand Ms. Polivy may not agree with  
17 the characterization and I will acknowledge up front that  
18 the record will stand for itself, and the document will  
19 speak for itself. But Rainbow Company, having advised the  
20 Commission repeatedly, that it was ready, willing and able  
21 to build, and that it intended to go forward and build by  
22 December of 1992. Not having built in March of 1993, the  
23 staff inquired of it as to what the status was, and my best  
24 recollection -- I do not have the document in front of me,  
25 but I am familiar with it --

1 JUDGE CHACHKIN: This is 1992, now?

2 MR. COLE: No, this is April of 1993.

3 JUDGE CHACHKIN: All right.

4 MR. COLE: In other words, four months beyond  
5 Rainbow Company's self-imposed deadline for putting the  
6 thing on the air. Rainbow Broadcasting Company advised Mr.  
7 Pendarvis in a letter, dated April of 1993, to the best of  
8 my recollection, and I don't believe I am mischaracterizing  
9 it. That Rainbow Broadcasting Company could not build  
10 unless the 316 application, providing for an assignment from  
11 Rainbow Company to Rainbow Limited was granted.

12 MS. POLIVY: Your Honor, that is a  
13 mischaracterization number one. Number two, Rainbow  
14 Broadcasting Company told the Commission that they would be  
15 on the air within 24 months of their starting construction.

16 The filings with the Commission never said that  
17 Rainbow Broadcasting Company was reliant on Rainbow  
18 Broadcasting Limited for financing. They never were, and it  
19 was never said to the Commission.

20 JUDGE CHACHKIN: If you want to know the documents  
21 relating to the source of funds which Rainbow Broadcasting  
22 Company intended to rely on, as of specific dates, that they  
23 made representations to the Commission, then that would be a  
24 proper request and I have no problem with that. But why  
25 don't people ask for specific documents, like you just

1 mentioned today and said, with respect to your  
2 representation on such and such, what documents did you  
3 have, what source of funds did you have available on that  
4 date that you made this representation and prior to the time  
5 that you assigned the station to Rainbow Broadcasting  
6 Limited? Then we would be dealing with relevant documents.

7 Now, why do we go across all over the place and  
8 have a general date and just as the questions which don't  
9 bear on Rainbow Broadcasting Company, which is what the  
10 issues concern.

11 MR. COLE: Again, Your Honor, the problem that we  
12 are faced with is the vagueness of the representation --

13 JUDGE CHACHKIN: Fine, but why don't we use the  
14 representations as the key to our requests?

15 MR. BLOCK: I believe Mr. Cole has asked that, as  
16 a matter of fact, in some of his requests.

17 JUDGE CHACHKIN: Well, if he did ask for it, then  
18 that is perfectly appropriate. Required documents showing  
19 that at each different phase that they wrote a document or  
20 something, whether in fact, what was the basis for the  
21 representation that they had funds available?

22 MR. BLOCK: I believe the intention of number nine  
23 was to get at that question inartfully.

24 MR. EISEN: Well, that is the problem with them --

25 JUDGE CHACHKIN: Well, I agree. The problem



1 with -- I have found through the years, the problem is that  
2 people ask general questions without trying to pin it down  
3 to specific events and, as a result, they usually wind up  
4 with not very much. Now, if this was pinned down to this  
5 representation that was made, and asked, in light of this  
6 representation, what was the source of funds available as of  
7 this date, the representation of the next date, whatever,  
8 that -- Now, I don't know, apparently, Mr. Cole has asked  
9 that question somewhere along the line here. Maybe we will  
10 find it.

11 But, let me put it this way, I am going to modify  
12 this question. Unless this has already been presented,  
13 maybe we already have this answer, I don't know.

14 MR. EISEN: We are talking about number nine,  
15 right Your Honor?

16 JUDGE CHACKIN: Yes, we are talking about number  
17 nine, yes. And what I am going to require you to produce  
18 is, any documents that you have showing your ability to  
19 finance the station prior to the time that the assignment  
20 took place?

21 MR. EISEN: We have no problem with that at all.

22 MR. BLOCK: Okay.

23 JUDGE CHACKIN: Well, that is relevant.

24 MR. BLOCK: We accept that modification, Your  
25 Honor.

1 JUDGE CHACHKIN: All right.

2 MR. COLE: Your Honor, we -- could we ask Rainbow  
3 what the date of the actual assignment was? I am not sure  
4 that is a matter of record at this point.

5 MS. POLIVY: It is a matter of record, and I  
6 don't have it with me, but it -- we filed the letter with  
7 the Commission.

8 JUDGE CHACHKIN: I am sure that these will be  
9 ascertained?

10 MR. COLE: That would be the consummation of the  
11 assignment of the permit from Rainbow Company to Rainbow  
12 Limited.

13 JUDGE CHACHKIN: Right. That is right.

14 MS. POLIVY: That was filed with the Commission.

15 JUDGE CHACHKIN: Again, 10, I don't see how 10 has  
16 anything to do with the issue.

17 MR. COLE: Okay.

18 JUDGE CHACHKIN: I am not going to require 10. I  
19 will require number 11. This relates only to the company we  
20 are talking about. Partnership agreement, limited  
21 partnership agreement, relating to ownership agreement in  
22 Rainbow or the station. So, I assume, what we are talking  
23 about here is, any agreements which existed prior to the  
24 time of the assignment?

25 MR. EISEN: Prior to the assignment.

1 JUDGE CHACHKIN: Prior to the assignment.

2 MR. EISEN: With no starting date with regard to  
3 the time?

4 JUDGE CHACHKIN: I would say, no starting date,  
5 yes. I assume there was only one agreement in existence up  
6 to that time. Any ownership interest promised, or  
7 something, before that --

8 MR. EISEN: Yes, it would have been filed as --

9 UNIDENTIFIED SPEAKER: Yes, except that -- I think  
10 that is a matter of record, but what we have to do --

11 JUDGE CHACHKIN: Well, if it is a matter of  
12 record, then you could indicate the parties where such  
13 records are and, if you don't want to furnish copies.

14 At least are there other documents refer to  
15 property of Rainbow or the station -- again, documents --  
16 yes, with respect to 12, is yes. And, of course, this is  
17 all with the understanding that this is all prior to the  
18 assignment.

19 Also 13, yes, with the same understanding. Also  
20 14, is yes, same understanding. No objection to 15.  
21 Sixteen, there was an objection to 16 and 17 on the grounds  
22 that it might -- well, I believe the objection was the word  
23 work product doctrine.

24 MR. EISEN: Yes, it was, Your Honor.

25 JUDGE CHACHKIN: And I think the separated trial

1 staff is -- I agree with the position that separate trial  
2 staff, that while the general rule is as -- Mr. Eisen, as  
3 you indicated, the general rule is that even assuming that  
4 it is demonstrated that a showing of substantial need has  
5 been made, still -- and also a showing that there would be  
6 undue hardship to obtain such material elsewhere, even when  
7 a proper showing is made, the Commission has made clear,  
8 consistent with the rule, that the presiding officers should  
9 protect against disclosure of the "mental impressions,  
10 conclusions, opinions, or legal theories of an attorney or  
11 other representative of a party concerning the litigation."

12           However, and the Commission does rely on 26(b)(3),  
13 as the court indicated in Handgards, Inc. v. Johnson &  
14 Johnson, 413 F.Supp. 926, at 933 to 932 -- this the Northern  
15 District of California, 1976. There is not an absolute  
16 immunity from discovery on mental impressions or opinion of  
17 work product. Where the attorneys' opinion or information  
18 is directly at issue -- and that is the situation here,  
19 where we have an issue here of whether there was an  
20 intentional violation of the ex parte rule.

21           And it is necessary to probe the mental  
22 impressions of Rainbow's representatives, including its  
23 attorneys, in order to make that determination.

24           Also, as I have indicated, and Mr. Block pointed  
25 out, my judgment of Ms. Polivy as a necessary witness, in

1 light of discussions with Mr. Gordon and her participation  
2 of the meeting in question. And, therefore, it would have  
3 to be she would have to testify and there would be -- the  
4 attorney/client privilege would have to be waived.

5 And the case also indicates under those  
6 circumstances, documents of this nature would be permitted  
7 to be turned over.

8 So, if there are any documents dealing with this  
9 subject, are going to be required to be turned over.

10 MR. EISEN: Very good, Your Honor, we will comply.

11 JUDGE CHACHKIN: All right. So I will grant 16  
12 and 17 and there is no objection to 18 and 19. So the next  
13 question is, when can these documents be turned over? I  
14 don't think they are too voluminous.

15 MR. EISEN: No, I don't think they are either.  
16 How about a week?

17 JUDGE CHACHKIN: Is that satisfactory to you? A  
18 week?

19 MR. BLOCK: Yes, it is.

20 JUDGE CHACHKIN: All right. Now we will take up  
21 Mr. Cole's first motion, and I think a lot of this has been  
22 dealt with previously.

23 MR. COLE: I believe so, Your Honor.

24 JUDGE CHACHKIN: The first request, documents  
25 relating to a trip taken by RBC principal, Mr. Rey, to

1 Washington, D.C. There has been an objection. I have  
2 difficulty understanding how the dates -- the documents  
3 reflecting the dates of the travel are going to assist us  
4 under the issues?

5 MR. COLE: Your Honor, again, Mr. Rey's presence  
6 in Washington -- well, at least contributed to -- we don't  
7 know what the circumstances were surrounding Mr. Rey's visit  
8 to Washington. We do know that during his visit to  
9 Washington, he went over to the Commission and had a meeting  
10 with the staff.

11 JUDGE CHACHKIN: But how is that going to -- the  
12 date of his -- all documents relating to a trip, including  
13 documents reflecting the dates of travel?

14 MR. EISEN: We would be perfectly willing to  
15 stipulate he was at this meeting.

16 UNIDENTIFIED SPEAKER: We can just tell him that?

17 MR. EISEN: It doesn't -- I don't think it is  
18 relevant.

19 JUDGE CHACHKIN: Now, you want documents relating  
20 to a trip. Now, buy that you mean, if he exchanged any  
21 correspondence or anything with the Rainbow's counsel?

22 MR. COLE: Either principals or Rainbow's counsel  
23 concerning the trip, what the purpose of the trip was, when  
24 the trip plans were made, when he actually arrived in  
25 Washington --

1 MR. EISEN: What is the relevancy to that?

2 MR. COLE: The relevancy is the question of the  
3 intent of Rainbow underlying the meeting and other ex parte  
4 communications is the focus of the issue. And, obviously,  
5 it is entirely possible that the correspondence or other  
6 notations or other documents produced in connection with  
7 that trip may reflect on Rainbow's intent underlying its ex  
8 parte communications.

9 JUDGE CHACHKIN: Well, if there exists any such  
10 documents, it could be relevant. If any documents there  
11 reflecting on their intent, insofar as visiting the  
12 Commission or dealing with --

13 MR. EISEN: Insofar as visiting the Commission.

14 JUDGE CHACHKIN: Or what they were contemplating  
15 doing concerning the Commission's -- the staff's rejection  
16 of the application for extension of time. Presumably -- I  
17 could see -- and argument could be made that this is  
18 relevant.

19 MS. POLIVY: Your Honor, he is asking for airline  
20 tickets and --

21 JUDGE CHACHKIN: Well, I don't know if he is  
22 asking for airline tickets.

23 MR. EISEN: He has asked for hotel records.

24 JUDGE CHACHKIN: Well --

25 MR. EISEN: I mean, what you just said does have -

1 --

2 MS. POLIVY: Fine.

3 MR. EISEN: Some nexus to the issue.

4 JUDGE CHACHKIN: No, he is asking --

5 MR. EISEN: He's backed --

6 JUDGE CHACHKIN: No, he is asking for documents  
7 reflecting the dates of travel.

8 MS. POLIVY: What difference --

9 MR. EISEN: Including documents reflecting the  
10 hotels, or other lodging places, --

11 JUDGE CHACHKIN: Well, I am not going to require  
12 that part of it.

13 MR. EISEN: Okay.

14 JUDGE CHACHKIN: But, I am going to require --

15 MR. EISEN: The rest of these --

16 JUDGE CHACHKIN: -- any documents --

17 MS. POLIVY: Relating to the meeting.

18 JUDGE CHACHKIN: -- relating to the meeting and  
19 the purpose of the trip, coming to Washington.

20 MR. EISEN: No problem.

21 JUDGE CHACHKIN: All right. The next one is --

22 MR. EISEN: 1F.

23 JUDGE CHACHKIN: 1F, right. Now, what are you  
24 seeking here, Mr. Cole.

25 MR. COLE: 1F --



1 JUDGE CHACHKIN: You have a time period now, I  
2 see. January 25, 1991, is that --

3 MR. COLE: It is the filing date of the fifth  
4 extension request.

5 JUDGE CHACHKIN: All right. And you want to know  
6 whether any documents relating to any communications during  
7 the pendency of this fifth extension request?

8 MR. COLE: That is correct. Or the sixth  
9 extension request, or the -- any of the captioned  
10 applications.

11 JUDGE CHACHKIN: Any of the -- by applications you  
12 mean the extension requests?

13 MR. COLE: Yes. Well, and there is the assignment  
14 application, as well.

15 MS. POLIVY: Oh, no, Your Honor. I mean, the  
16 assignment was not put in issue here.

17 JUDGE CHACHKIN: Well, the assignment is an issue  
18 to the extent to which it certainly could have been effected  
19 by action of the Commission.

20 MS. POLIVY: But, Your Honor, the issues go only  
21 to Rainbow Broadcasting, there are no allegations regarding  
22 the assignment. The assignment was pendent. And, in fact,  
23 the first time, the Commission dismissed it as moot.

24 JUDGE CHACHKIN: Well, in --

25 MS. POLIVY: But there is no separate thing.

1 JUDGE CHACHKIN: No one is claiming a separate  
2 thing. But, necessarily, the fate of RBL is dependent on  
3 what happens to RBC. And, insofar as where any  
4 communication is there, considering the connection between  
5 the two, if there is any communications there relating to  
6 these extension applications, it seems to me that would be  
7 relevant. For the ex parte issue.

8 MR. EISEN: What about the voucher, Your Honor,  
9 that the request also calls for all documents without  
10 breaking it down into anything that is specifically relevant  
11 under the issue? I objected to it because I thought it was  
12 grossly over-broad.

13 JUDGE CHACHKIN: All right now, by that, what  
14 document are you looking for? Documents relating to  
15 communications -- communications relating to what? Relating  
16 to the grant of these applications or the denial of these  
17 applications, or what?

18 MR. COLE: I want any communications relating to  
19 the applications?

20 MR. EISEN: Well, that is too broad, Your Honor.

21 MR. COLE: Well, how do we know that, Your Honor?  
22 We don't know. And, certainly, we know that there were  
23 communications between Ms. Polivy and Mr. Gordon. Which Mr.  
24 Gordon has indicated, sought to get to the merits. And Ms.  
25 Polivy has denied that.

1 But, to the extent that those may be ex parte  
2 communications in violation of the rules, we are entitled to  
3 find out about them.

4 JUDGE CHACHKIN: So what we are relating to is  
5 their --

6 MS. POLIVY: Your Honor, I am not certain how that  
7 comes into the request.

8 MR. EISEN: So, does that mean that if there  
9 communication on a matter that had nothing to do with Mr.  
10 Gordons' processing of the application, that in some way was  
11 tangent to the application, that we would have to produce  
12 it? I don't see why Mr. Cole, why press can't, simply,  
13 narrow the request to be more specific in terms of what  
14 documents relating these applications are --

15 JUDGE CHACHKIN: What subject matter were you  
16 interested in with respect to the applications -- insofar as  
17 it applies to the ex parte issue?

18 MR. COLE: I am looking for anything relating to  
19 the applications themselves. If Ms. Polivy called Mr.  
20 Gordon about a completely unrelated application, now having  
21 to do with Rainbow, not having to do with Orlando, I don't  
22 particularly care about that. I am concerned about any  
23 communications by anyone, by Rainbow, or anyone on its  
24 behalf, contacting the staff about any of the three  
25 captioned applications.

1 JUDGE CHACHKIN: Well, that is --

2 MR. COLE: At any time during the pendency.

3 JUDGE CHACHKIN: -- we are dealing only here with  
4 certain applications, correct?

5 MR. EISEN: Correct.

6 JUDGE CHACHKIN: And the only thing that it would  
7 seem to come up as far as extension application, would be  
8 the deal with, whether or not it should be granted, or it got  
9 more time, or what have you.

10 So it seems to me it is limited in scope  
11 sufficient that if there are any documents relating to  
12 communications, as outlined -- if there are exists. I would  
13 doubt that there would be any such documents. If there did,  
14 I would assume that there would be a very narrow amount of  
15 documents.

16 But in any event, I am going to grant this  
17 request. I think it is --

18 MS. POLIVY: Your Honor, --

19 JUDGE CHACHKIN: It is sufficient insofar it  
20 relates to whom the communications are between.

21 MS. POLIVY: Your Honor, number one, I understand  
22 your ruling with respect to little two there, with the FCC.  
23 But what he is asking for is that any documents relating to  
24 any of these applications between RBC and anyone acting on  
25 behalf of RBC. I mean --

1 MR. COLE: No, Your Honor, that is a misreading.  
2 Let me just correct that. The between referred to (1) a  
3 universal RBC and its representatives, and (2) members of  
4 the staff. In other words, communications between group one  
5 and anybody from group two.

6 JUDGE CHACHKIN: Well, now it is even limited  
7 more. We are just talking between --

8 MS. POLIVY: That is your little two. But your  
9 little one, you are saying that we should ignore?

10 MR. COLE: I am not saying you should ignore, what  
11 I am saying is --

12 JUDGE CHACHKIN: Well, let's hear -- getting some  
13 clarification.

14 MR. COLE: I'm sorry, Your Honor, I tried to make  
15 this as clear as I could. What I am saying is, that there  
16 is communications between --

17 JUDGE CHACHKIN: On the one hand --

18 MR. COLE: On the one hand, people in this  
19 category -- anybody from this category. And, on the other  
20 hand, people in this category.

21 JUDGE CHACHKIN: All right.

22 MR. COLE: And that is what I tried to communicate  
23 with little one and little two.

24 JUDGE CHACHKIN: So he is saying any  
25 communications between RBC and its agents or

1 representatives, and members of the Commission staff.

2 MS. POLIVY: Okay.

3 JUDGE CHACHKIN: Now that is pretty limited, I  
4 would assume.

5 MR. COLE: But now, the communications, the  
6 documents themselves -- let me hasten the point up, may  
7 involve, for example, Mr. Rey writes to one of his fellow  
8 principals and says, I understand we talked to the staff  
9 today and here is the information we got.

10 MS. POLIVY: We ex parted the staff and this is  
11 what they did?

12 MR. COLE: A document along those line.

13 MR. EISEN: Yes.

14 JUDGE CHACHKIN: But there exist such documents,  
15 you know --

16 MR. EISEN: Good luck, but that's fine.

17 JUDGE CHACHKIN: All we can do is get  
18 clarification. All right, request 1H, billing records, the  
19 firm of Renouf & Polivy, relating to work performed. We  
20 have Ms. Polivy here now, now what is -- your argument is --

21 MS. POLIVY: He could just ask for --

22 JUDGE CHACHKIN: Press has not shown the relevance  
23 of requested records.

24 MS. POLIVY: No, but what -- he has asked for --  
25 our office records. I mean, for what?

1 JUDGE CHACHKIN: What would the billing -- well,  
2 the billing record would reflect information, presumably, of  
3 what work was performed in connection with these extension  
4 requests -- request for extensions.

5 MS. POLIVY: -- will produce the bills. Is he  
6 asking for --

7 MR. EISEN: That is the problem, Your Honor. It  
8 is unclear what Press is requesting.

9 JUDGE CHACHKIN: All right, what did he express -

10 MR. COLE: I am requesting --

11 MS. POLIVY: And, also, it is overly broad. I  
12 mean --

13 JUDGE CHACHKIN: We are talking about a one year  
14 period -- a year and three months.

15 MS. POLIVY: Yes, but for any work done on behalf  
16 of the client. Your Honor, I don't think he is --

17 JUDGE CHACHKIN: Well, it would have to be work  
18 done in connection with the application for extension of  
19 time.

20 MS. POLIVY: Well, it would have to be something  
21 relevant to the issues. Certainly, not everything --

22 MR. COLE: The pending applications.

23 MS. POLIVY: Number one, number two --

24 MR. EISEN: It is too broad.

25 MS. POLIVY: -- it is far too broad. Aside from

1 the fact that I am not sure I understand it. But if he is  
2 saying we want the bills that you sent to Rainbow, that is  
3 one thing. Then we can discuss that. But if you say, I  
4 want all your books and records, that's unprecedented.

5 JUDGE CHACHKIN: Well, he is asking only on behalf  
6 of RBC.

7 MS. POLIVY: Well, I understand, but --

8 MR. COLE: Well, I also have one pending on RBL,  
9 as well, Your Honor. They are two separate requests.

10 JUDGE CHACHKIN: But now we are asking for RBC.  
11 You want the billing records?

12 MR. COLE: That is correct, Your Honor. And the  
13 reason -- if I could be heard on this.

14 JUDGE CHACHKIN: Okay, no problem.

15 MR. EISEN: I'm sorry.

16 MR. COLE: Your Honor, again, let me just state  
17 for the record that, having a stereo voice on behalf of  
18 Rainbow at the other end of the table is not, especially,  
19 helpful.

20 JUDGE CHACHKIN: All right, all right.

21 MR. COLE: But that is neither here nor there.

22 JUDGE CHACHKIN: What do you expect to find from  
23 the billing records?

24 MR. COLE: I would like to find out when contacts  
25 were made by anyone at the firm of Renouf & Polivy, with the



1 staff, concerning applications. Again, we know, from the  
2 information already in the record, that there were,  
3 apparently, communications between, at least Ms. Polivy and  
4 Mr. Gordon at various point sin the pendency of the  
5 applications.

6 I would like to know when those occurred, how long  
7 they lasted, I believe these records will show that.  
8 Normally, at least in my experience, attorneys keep track of  
9 their time on a daily basis in some increments and reflect  
10 and maintain records as to what each increment was spent  
11 on -- each incremental time was spent on.

12 And I think that will be relevant to the issue of  
13 the number of contacts, when they occurred and, possibly,  
14 what they were about. The bills themselves would not  
15 necessarily reflect that. The bills, themselves, in many  
16 instances, might just reflect total amount of time spent  
17 during a particular period and a bottom-line dollar amount.

18 MS. POLIVY: Your Honor, I do not understand why  
19 the kind of invasion that Mr. Cole is proposing is necessary  
20 for any of these issues.

21 JUDGE CHACHKIN: Well, the billing records would  
22 provide, possibly, contemporaneous data as to what took  
23 place with Commission staff and what work was performed by  
24 the client in connection with any communications with the  
25 Commission staff.